

EXHIBIT 2

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**DECLARATION OF TAMARA
KAPALOSKI IN SUPPORT OF
MARKETSTAR’S OPPOSITION TO
BLENDJET’S MOTION TO COMPEL
RESPONSE TO SUBPOENA TO
MARKETSTAR**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

I TAMARA KAPALOSKI declare as follows:

1. I am a lawyer at Dorsey & Whitney LLP, counsel for Plaintiff Blendtec Inc. (“Blendtec”) in the above captioned case. I submit this declaration in support of MarketStar’s Opposition to Blendjet’s Motion to Compel Response to Subpoena to MarketStar. I am fully familiar with the facts set forth in this declaration from personal knowledge or from documents

that I have reviewed. If called as a witness, I could and would testify competently under oath to the facts contained herein.

2. Pursuant to the Scheduling Order governing this case, Blendjet is limited to 50 requests for production (“RFP”) to Blendtec. *See* ECF 25 at 3.

3. Blendjet has issued 50 RFPs to Blendtec.

4. Pursuant to the ESI Protocol governing this case, Blendjet is limited to ten (10) ESI custodians from Blendtec and ten (10) search terms per custodian. *See* ECF 33 at ¶29.

5. Blendjet has designated 10 Blendtec ESI custodians. Among its custodians are Keith Titus and Ben Kaufman, the CEO and CFO respectively of Blendtec.

6. Mr. Titus and Mr. Kaufman are also employed by MarketStar. As a result, and as Blendjet knows, to capture any relevant emails that were sent through their MarketStar email accounts, Blendtec agreed to produce emails responsive to Blendjet’s email search requests (if any) that Mr. Titus and Mr. Kaufman sent through their MarketStar email accounts.

7. Blendtec has made its position clear to Blendjet: Blendjet’s subpoena to MarketStar appears to be an attempt to get around the numerical RFP limitation and the numerical limitation on ESI custodians.

8. Blendtec has also made the following position clear to Blendjet: Blendjet’s subpoena to MarketStar appears to be an attempt to get around the ESI Protocol (Subpoena requests 4-6).

9. The majority of the documents requested in Blendjet’s subpoena have already been produced by Blendtec:

Request 1: All documents that relate to, refer to, or discuss Blendtec, including, but not limited to, its brand, customers, marketing and/or advertising strategies, competitors, the Blendtec Marks, and/or the Blendtec Products.

Blendjet requested these documents from Blendtec through RFPs 14 (Blendtec products), 16 and 20 (Blendtec's sales channels), 17-18 (Blendtec's customers) 18 (Blendtec advertising), 24 (Google advertising), 26 (competitive landscape), and 27-30 (competitive products). Blendtec responded to these RFPs months ago and has produced responsive documents.

Request 2: All documents related to any relationship, agreements, or joint venture between MarketStar and any entity with a corporate name or registered trademark that includes the word "blend," including but not limited to Blendtec.

Blendjet requested these documents from Blendtec through RFP 50 ("Documents sufficient to evidence any and all aspects of any past and/or present relationship between Blendtec and MarketStar, including, but not limited to, any formal or informal agreements between Blendtec and MarketStar and/or between Blendtec and any MarketStar employees related to their provisions of services for Blendtec while employed by MarketStar.")). Blendtec has objected to RFP 50.

Request 3: Any and all Searches or monitoring reports generated or commissioned in connection with the Blendtec Marks, including the results thereof.

Blendjet requested these documents from Blendtec through RFP 6 ("All documents that comprise or refer to searches and monitoring reports that Blendtec has conducted or had conducted on its behalf in connection with any of the Blendtec Marks.")). Blendtec has produced responsive documents.

Request 4: All documents related to or emanating from MarketStar employee Keith Titus's relationship and work with Blendtec, including, but not limited to, any communications between Mr. Titus and any Blendtec employees, contractors, and/or outside legal counsel.

Subject to the ESI Protocol, Blendjet requested these documents through its email production request number 2 to Keith Titus. Blendtec has agreed to produce documents responsive

to Blendjet's email production request related to Keith Titus.

Request 5: All documents related to or emanating from MarketStar employee Ben Kaufman's relationship and work with Blendtec, including, but not limited to, any communications between Mr. Kaufman and any Blendtec employees, contractors, and/or outside legal counsel.

Subject to the ESI Protocol, Blendjet requested these documents through its email production request number 5 to Ben Kaufman. Blendtec has agreed to produce documents responsive to Blendjet's email production request related to Ben Kaufman.

Request 6: All documents related to or emanating from any MarketStar employee's (other than Mr. Titus and Mr. Kaufman) relationship and work with Blendtec, including, but not limited to, any communications between those employees and any Blendtec employees, contractors, and/or outside legal counsel.

Blendjet has reached the numerical limitation on ESI Custodians set forth in the ESI Protocol.

Request 7: All documents relating or referring to portable blenders, including any analyses, studies, customer surveys, and/or internal memoranda related to the market, competitive landscape, or features or functionalities related to portable blenders.

Blendjet requested these documents from Blendtec through RFP 28 ("All documents relating to portable blenders, including any analyses, studies, customer surveys, and/or internal memoranda related to the market, competitive landscape, or features or functionalities related to portable blenders."). Blendtec responded to this RFP months ago and has produced responsive documents.

Request 8: All documents constituting or referring to any comparison, study, research, or report related to the performance of any portable blender (including, but not limited to any BlendJet product) vis-à-vis traditional counter-top blenders, including Blendtec blenders.

Blendjet requested these documents from Blendtec through RFP 28 ("All documents relating to portable blenders, including any analyses, studies, customer surveys, and/or internal

memoranda related to the market, competitive landscape, or features or functionalities related to portable blenders.”). Blendtec responded to this RFP months ago and has produced responsive documents.

Request 9: All documents that relate to, refer to, or discuss BlendJet, including, but not limited to, its brand, customers, marketing and/or advertising strategies, competitors, the BlendJet Marks, and/or the BlendJet Products.

Blendjet requested these documents from Blendtec through RFP 31 (“All documents related to BlendJet, its products, customers, and the BlendJet Marks.”). Blendtec responded to these RFP months ago and has produced responsive documents.

Request 10: All documents and communications related to Blendtec’s decision to send a cease and desist letter to BlendJet, and to file the Complaint.

Blendjet requested these documents from Blendtec through RFP 37 (“All documents and communications related to Blendtec’s decision to send a cease and desist letter to BlendJet, and to file the Complaint.”). Blendtec responded to this RFP months ago and has produced responsive documents.

Request 11: Documents sufficient to describe the relationship among Blendtec, MarketStar, and Wasatch Group, including, but not limited to, any investment or loan made by Wasatch Group (or any party related thereto) in or to Blendtec (or any party related thereto), and the results and present status of any such relationship.

Blendjet requested these documents from Blendtec through RFP 49 (“Documents sufficient to evidence any and all aspects of any past or present relationship between Blendtec and Wasatch Group, including, but not limited to, any investment or loan made by Wasatch Group (or any party related thereto) in or to Blendtec (or any party related thereto), and Wasatch’s foreclosure on any collateral provided as security for any such loan.”). Blendtec has objected to RFP 49.

Request 12: All documents related to, or otherwise referencing, the Current Litigation.

Blendjet requested these documents from Blendtec through RFP 38 (“All documents reflecting any communication or discussion between Blendtec and any third party related to or concerning the Current Litigation.”). Blendtec has produced responsive documents.

10. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 24th day of February, 2023.

/s/ Tamara L. Kapaloski
Tamara L. Kapaloski

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2023, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system and served on the following counsel of record via the CM/ECF notification system:

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/s/ Tamara L. Kapaloski